

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

| | | |
|---------------------------|---|--------------------------------|
| FREDERICK WILLIAM BRYANT, | * | |
| Petitioner, | * | CASE NO. 4:11-cv-90104 CDL MSH |
| vs. | * | CASE NO. 4:10-cr-3 CDL MSH |
| UNITED STATES OF AMERICA, | * | |
| Respondent. | * | |

ORDER

Petitioner filed what was deemed a Motion to Vacate pursuant to 18 U.S.C. § 2255 in this court on April 6, 2011. (ECF No. 62.) The Motion, however, was titled a “Petition for Sentence Modification.” On April 7, 2011, the Petitioner was sent a Notice of Recharacterization of the motion to notify him that the petition he filed would be treated as a § 2255 motion to vacate. (ECF No. 66.) After further review, it was determined that the pleading was a proper Motion for Sentence Modification pursuant to 18 U.S.C. § 3582, and the Notice of Recharacterization was withdrawn on July 19, 2011.

A Report and Recommendation was thereafter filed on August 8, 2011, recommending denial of the § 3582 motion for sentence modification. Two days later, prior to his receipt of the R&R, Petitioner filed a Motion to Amend his “§ 2255 motion,” asking the court to allow him to file an amended complaint because he had been transferred to federal prison. On September 16, 2011, Petitioner filed an “Amended Petition.” (ECF No. 74.) On the same date, he filed a second motion to amend his petition which the clerk’s office considered an objection to the R&R. (ECF No. 75.)

Due to the procedural posture of this case, it has been determined that the Report and Recommendation should be WITHDRAWN in this case and that the Petitioner's motion to amend his petition be GRANTED so that he may proceed on both his § 3582 claims and his § 2255 claims.

ACCORDINGLY, the United States Attorney is hereby ordered to file a responsive pleading which addresses the issues raised in Petitioner's motion for sentence modification and motion to vacate within sixty (60) days of the date of filing of this Order.

SO ORDERED this 26th day of October, 2011.

S/ STEPHEN HYLES
UNITED STATES MAGISTRATE JUDGE